19-1-101. Short title.

This title is known as the "Environmental Quality Code."

Enacted by Chapter 112, 1991 General Session

19-1-102. Purposes.

The purpose of this title is to:

(1) clarify the powers and duties of the Department of Environmental Quality in relationship to local health departments;

(2) provide effective, coordinated management of state environmental concerns;

(3) safeguard public health and quality of life by protecting and improving environmental quality while considering the benefits to public health, the impacts on economic development, property, wildlife, tourism, business, agriculture, forests, and other interests, and the costs to the public and to industry; and

(4) (a) strengthen local health departments' environmental programs;

(b) build consensus among the public, industry, and local governments in developing environmental protection goals; and

(c) appropriately balance the need for environmental protection with the need for economic and industrial development.

Enacted by Chapter 112, 1991 General Session

19-1-103. Definitions.

As used in this title:

(1) "Department" means the Department of Environmental Quality.

(2) "Executive director" means the executive director of the department appointed pursuant to Section 19-1-104.

(3) "Local health department" means a local health department as defined in Title 26A, Chapter 1, Part 1.

(4) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state.

Enacted by Chapter 112, 1991 General Session

19-1-104. Creation of department -- Appointment of executive director.

(1) There is created within state government the Department of Environmental Quality. The department shall be administered by an executive director.

(2) The executive director shall be appointed by the governor with the consent of the Senate and shall serve at the pleasure of the governor.

(3) The executive director shall have demonstrated the necessary administrative and professional ability through education and experience to efficiently and effectively manage the department's affairs.

(4) The Legislature shall fix the compensation of the executive director in accordance with Title 67, Chapter 22, State Officer Compensation.

Amended by Chapter 176, 2002 General Session

19-1-105. Divisions of department -- Control by division directors.

(1) The following divisions are created within the department:

(a) the Division of Air Quality, to administer Title 19, Chapter 2, Air Conservation Act;

(b) the Division of Drinking Water, to administer Title 19, Chapter 4, Safe Drinking Water Act;

(c) the Division of Environmental Response and Remediation, to administer:

(i) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act; and

(ii) Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

(d) the Division of Radiation Control, to administer Title 19, Chapter 3, Radiation Control Act;

(e) the Division of Solid and Hazardous Waste, to administer:

(i) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act;

(ii) Title 19, Chapter 6, Part 2, Hazardous Waste Facility Siting Act;

(iii) Title 19, Chapter 6, Part 5, Solid Waste Management Act;

(iv) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal;

(v) Title 19, Chapter 6, Part 7, Used Oil Management Act;

(vi) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act;

(vii) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act;

(viii) Title 19, Chapter 6, Part 11, Industrial Byproduct Reuse; and

(ix) Title 19, Chapter 6, Part 12, Disposal of Electronic Waste Program; and

(f) the Division of Water Quality, to administer Title 19, Chapter 5, Water Quality Act.

(2) Each division is under the immediate direction and control of a division director appointed by the executive director.

(3) (a) A division director shall possess the administrative skills and training necessary to perform the duties of division director.

(b) A division director shall hold one of the following degrees from an accredited college or university:

(i) a four-year degree in physical or biological science or engineering;

(ii) a related degree; or

(iii) a degree in law.

(4) The executive director may remove a division director at will.

(5) A division director shall serve as the executive secretary to the policymaking board, created in Section 19-1-106, that has rulemaking authority over the division director's division.

Amended by Chapter 360, 2012 General Session

19-1-106. Boards within department.

(1) The following policymaking boards are created within the department:

(a) the Air Quality Board, appointed under Section 19-2-103;

(b) the Radiation Control Board, appointed under Section 19-3-103;

(c) the Drinking Water Board, appointed under Section 19-4-103;

(d) the Water Quality Board, appointed under Section 19-5-103; and

(e) the Solid and Hazardous Waste Control Board, appointed under Section 19-6-103.

(2) The authority of the boards created in Subsection (1) is limited to the specific authority granted them under this title.

Enacted by Chapter 112, 1991 General Session

19-1-108. Creation of Environmental Quality Restricted Account -- Purpose of restricted account -- Sources of funds -- Uses of funds.

(1) There is created the Environmental Quality Restricted Account.

(2) The sources of money for the restricted account are:

(a) radioactive waste disposal fees collected under Sections 19-3-106 and 19-3-106.4 and other fees collected under Subsection 19-3-104(5);

(b) hazardous waste disposal fees collected under Section 19-6-118;

(c) PCB waste disposal fees collected under Section 19-6-118.5;

(d) nonhazardous solid waste disposal fees collected under Section 19-6-119; and

(e) the investment income derived from money in the Environmental Quality Restricted Account.

(3) In each fiscal year, the first $400,000 collected from the waste disposal fees listed in Subsection (2), collectively, shall be deposited in the General Fund as free revenue. The balance shall be deposited in the Environmental Quality Restricted Account.

(4) The Legislature may annually appropriate money from the Environmental Quality Restricted Account to:

(a) the department for the costs of administering radiation control programs;

(b) the department for the costs of administering solid and hazardous waste programs; and

(c) subject to Subsection (6), the Hazardous Substances Mitigation Fund, up to $400,000, to provide money to:

(i) meet the state's cost share requirements for cleanup under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq. as amended; and

(ii) respond to an emergency as provided in Section 19-6-309.

(5) After the requirements of Subsection (3) are met, sources of money for the restricted account described in Subsection (2)(a) may only be used for the purpose described in Subsection (4)(a).

(6) An annual request for money to be appropriated from the Environmental Quality Restricted Account to the Hazardous Substances Mitigation Fund may be made by the department only after the executive director's review of the Environmental Quality Restricted Account's or the Hazardous Substances Mitigation Fund's balance as of the end of the fiscal year immediately before the general session for which the request is made.

(7) In order to stabilize funding for the radiation control program and the solid and hazardous waste program, the Legislature shall in years of excess revenues

reserve in the Environmental Quality Restricted Account sufficient money to meet departmental needs in years of projected shortages.

(8) The Legislature may not appropriate money from the General Fund to the department as a supplemental appropriation to cover the costs of the radiation control program and the solid and hazardous waste program in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year.

(9) Money appropriated under this part that is not expended at the end of the fiscal year lapses into the Environmental Quality Restricted Account.

(10) (a) The balance in the Environmental Quality Restricted Account may not exceed $4,000,000 above the anticipated revenue need for the money in the restricted account for the fiscal year.

(b) Excess funds under Subsection (10)(a) shall be credited on a proportionate basis to each person who paid money to the fund in the previous fiscal year.

Amended by Chapter 330, 2013 General Session

19-1-201. Powers and duties of department -- Rulemaking authority.

(1) The department shall:

(a) enter into cooperative agreements with the Department of Health to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered;

(b) consult with the Department of Health and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups;

(c) coordinate implementation of environmental programs to maximize efficient use of resources by developing, with local health departments, a Comprehensive Environmental Service Delivery Plan that:

(i) recognizes that the department and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually; and

(d) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as follows:

(i) for a board created in Section 19-1-106, rules regarding:

(A) board meeting attendance; and

(B) conflicts of interest procedures; and

(ii) procedural rules that govern:

(A) an adjudicative proceeding, consistent with Section 19-1-301; and

(B) a permit review adjudicative proceeding, consistent with Section 19-1-301.5.

(2) The department may:

(a) investigate matters affecting the environment;

(b) investigate and control matters affecting the public health when caused by environmental hazards;

(c) prepare, publish, and disseminate information to inform the public concerning issues involving environmental quality;

(d) establish and operate programs, as authorized by this title, necessary for protection of the environment and public health from environmental hazards;

(e) use local health departments in the delivery of environmental health programs to the extent provided by law;

(f) enter into contracts with local health departments or others to meet responsibilities established under this title;

(g) acquire real and personal property by purchase, gift, devise, and other lawful means;

(h) prepare and submit to the governor a proposed budget to be included in the budget submitted by the governor to the Legislature;

(i) (i) establish a schedule of fees that may be assessed for actions and services of the department according to the procedures and requirements of Section 63J-1-504; and

(ii) in accordance with Section 63J-1-504, all fees shall be reasonable, fair, and reflect the cost of services provided;

(j) prescribe by rule reasonable requirements not inconsistent with law relating to environmental quality for local health departments;

(k) perform the administrative functions of the boards established by Section 19-1-106, including the acceptance and administration of grants from the federal government and from other sources, public or private, to carry out the board's functions;

(l) upon the request of any board or a division director, provide professional, technical, and clerical staff and field and laboratory services, the extent of which are limited by the funds available to the department for the staff and services; and

(m) establish a supplementary fee, not subject to Section 63J-1-504, to provide service that the person paying the fee agrees by contract to be charged for the service in order to efficiently utilize department resources, protect department permitting processes, address extraordinary or unanticipated stress on permitting processes, or make use of specialized expertise.

(3) In providing service under Subsection (2)(m), the department may not provide service in a manner that impairs any other person's service from the department.

Amended by Chapter 360, 2012 General Session
Amended by Chapter 360, 2012 General Session, (Coordination Clause)

19-1-202. Duties and powers of the executive director.

(1) The executive director shall:

(a) administer and supervise the department;

(b) coordinate policies and program activities conducted through boards, divisions, and offices of the department;

(c) approve the proposed budget of each board, division, and office within the department;

(d) approve all applications for federal grants or assistance in support of any department program;

(e) with the governor's specific, prior approval, expend funds appropriated by the Legislature necessary for participation by the state in any fund, property, or service provided by the federal government; and

(f) in accordance with Section 19-1-301, appoint one or more administrative law judges to hear an adjudicative proceeding within the department.

(2) The executive director may:

(a) issue orders to enforce state laws and rules established by the department except where the enforcement power is given to a board created under Section 19-1-106, unless the executive director finds that a condition exists that creates a clear and present hazard to the public health or the environment and requires immediate action, and if the enforcement power is vested with a board created under Section 19-1-106, the executive director may with the concurrence of the governor order any person causing or contributing to the condition to reduce, mitigate, or eliminate the condition;

(b) with the approval of the governor, participate in the distribution, disbursement, or administration of any fund or service, advanced, offered, or contributed by the federal government for purposes consistent with the powers and duties of the department;

(c) accept and receive funds and gifts available from private and public groups for the purposes of promoting and protecting the public health and the environment and expend the funds as appropriated by the Legislature;

(d) make policies not inconsistent with law for the internal administration and government of the department, the conduct of its employees, and the custody, use, and preservation of the records, papers, books, documents, and property of the department;

(e) create advisory committees as necessary to assist in carrying out the provisions of this title;

(f) appoint division directors who may be removed at the will of the executive director and who shall be compensated in an amount fixed by the executive director;

(g) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, affected groups, political subdivisions, and industries in carrying out the purposes of this title;

(h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act, employ employees necessary to meet the requirements of this title;

(i) authorize any employee or representative of the division to conduct inspections as permitted in this title;

(j) encourage, participate in, or conduct any studies, investigations, research, and demonstrations relating to hazardous materials or substances releases necessary to meet the requirements of this title;

(k) collect and disseminate information about hazardous materials or substances releases;

(l) review plans, specifications, or other data relating to hazardous substances releases as provided in this title; and

(m) maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions for the protection of the public health and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, or under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous calendar year, and those that the department plans to address in the upcoming year pursuant to this title, including if upon completion of the response action the site:

(i) will be suitable for unrestricted use; or

(ii) will be suitable only for restricted use, stating the institutional controls identified in the remedy to which use of the site is subject.

Amended by Chapter 377, 2009 General Session

19-1-203. Representatives of department authorized to enter regulated premises.

(1) Authorized representatives of the department, upon presentation of appropriate credentials, may enter at reasonable times upon the premises of properties regulated under this title to perform inspections to insure compliance with rules made by the department.

(2) The inspection authority provided in this section does not apply to chapters in this title which provide for specific inspection procedures and authority.

Enacted by Chapter 112, 1991 General Session

19-1-204. Legal advice and representation for department.

(1) The attorney general is the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them.

(2) The attorney general or the county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil or criminal action requested by the executive director or any board created in Section 19-1-106 to abate a condition which exists in violation of, or to prosecute for the violation of or for the enforcement of, the laws or standards, orders, and rules of the department.

Enacted by Chapter 112, 1991 General Session

19-1-205. Assumption of responsibilities.

The department assumes all the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities of the Division of Environmental Health, the Air Conservation Committee, the Solid and Hazardous Waste Committee, the Utah Safe Drinking Water Committee, and the Water Pollution Control Committee previously vested in the Department of Health and its executive director:

(1) including programs for individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies; but

(2) excluding all other sanitation programs, which shall be administered by the Department of Health.

Enacted by Chapter 112, 1991 General Session

19-1-206. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by or delegated to the department or a division or board of the department on or after July 1, 2009, and to a prime contractor or subcontractor in accordance with Subsection (2)(b).

(b) (i) A prime contractor is subject to this section if the prime contract is in the amount of $1,500,000 or greater.

(ii) A subcontractor is subject to this section if a subcontract is in the amount of $750,000 or greater.

(3) This section does not apply to contracts entered into by the department or a division or board of the department if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract or agreement is between:

(i) the department or a division or board of the department; and

(ii) (A) another agency of the state;

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state;

(c) the executive director determines that applying the requirements of this section to a particular contract interferes with the effective response to an immediate health and safety threat from the environment; or

(d) the contract is:

(i) a sole source contract; or

(ii) an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive

director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) a public transit district in accordance with Section 17B-2a-818.5;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor shall follow to demonstrate to the public transit district compliance with this section that shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either:

(I) the Utah Insurance Department;

(II) an actuary selected by the contractor or the contractor's insurer; or

(III) an underwriter who is responsible for developing the employer group's premium rates;

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement of actuarial equivalency provided by:

(I) an actuary; or

(II) an underwriter who is responsible for developing the employer group's premium rates; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Amended by Chapter 425, 2014 General Session

19-1-301. Adjudicative proceedings.

(1) As used in this section, "dispositive action" means a final agency action that:

(a) the executive director takes following an adjudicative proceeding on a request for agency action; and

(b) is subject to judicial review under Section 63G-4-403.

(2) This section governs adjudicative proceedings that are not permit review adjudicative proceedings as defined in Section 19-1-301.5.

(3) (a) The department and its boards shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(b) The procedures for an adjudicative proceeding conducted by an administrative law judge are governed by:

(i) Title 63G, Chapter 4, Administrative Procedures Act;

(ii) this title;

(iii) rules adopted by the department under:

(A) Subsection 63G-4-102(6); or

(B) this title; and

(iv) the Utah Rules of Civil Procedure, in the absence of a procedure established under Subsection (3)(b)(i), (ii), or (iii).

(4) Except as provided in Section 19-2-113, an administrative law judge shall hear a party's request for agency action.

(5) The executive director shall appoint an administrative law judge who:

(a) is a member in good standing of the Utah State Bar;

(b) has a minimum of:

(i) 10 years of experience practicing law; and

(ii) five years of experience practicing in the field of:

(A) environmental compliance;

(B) natural resources;

(C) regulation by an administrative agency; or

(D) a field related to a field listed in Subsections (5)(b)(ii)(A) through (C); and

(c) has a working knowledge of the federal laws and regulations and state statutes and rules applicable to a request for agency action.

(6) In appointing an administrative law judge who meets the qualifications described in Subsection (5), the executive director may:

(a) compile a list of persons who may be engaged as an administrative law judge pro tempore by mutual consent of the parties to an adjudicative proceeding;

(b) appoint an assistant attorney general as an administrative law judge pro tempore; or

(c) (i) appoint an administrative law judge as an employee of the department; and

(ii) assign the administrative law judge responsibilities in addition to conducting an adjudicative proceeding.

(7) (a) An administrative law judge:

(i) shall conduct an adjudicative proceeding;

(ii) may take any action that is not a dispositive action; and

(iii) shall submit to the executive director a proposed dispositive action, including:

(A) written findings of fact;

(B) written conclusions of law; and

(C) a recommended order.

(b) The executive director may:

(i) approve, approve with modifications, or disapprove a proposed dispositive action submitted to the executive director under Subsection (7)(a); or

(ii) return the proposed dispositive action to the administrative law judge for further action as directed.

(c) In making a decision regarding a dispositive action, the executive director

may seek the advice of, and consult with:

(i) the assistant attorney general assigned to the department; or

(ii) a special master who:

(A) is appointed by the executive director; and

(B) is an expert in the subject matter of the proposed dispositive action.

(d) The executive director shall base a final dispositive action on the record of the proceeding before the administrative law judge.

(8) To conduct an adjudicative proceeding, an administrative law judge may:

(a) compel:

(i) the attendance of a witness; and

(ii) the production of a document or other evidence;

(b) administer an oath;

(c) take testimony; and

(d) receive evidence as necessary.

(9) A party may appear before an administrative law judge in person, through an agent or employee, or as provided by department rule.

(10) (a) An administrative law judge or the executive director may not participate in an ex parte communication with a party to an adjudicative proceeding regarding the merits of the adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties.

(b) If an administrative law judge or the executive director receives an ex parte communication, the person who receives the ex parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information.

(11) Nothing in this section limits a party's right to an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 333, 2012 General Session
Amended by Chapter 360, 2012 General Session
Amended by Chapter 360, 2012 General Session, (Coordination Clause)

19-1-301.5. Permit review adjudicative proceedings.

(1) As used in this section:

(a) "Dispositive action" means a final agency action that:

(i) the executive director takes as part of a permit review adjudicative proceeding; and

(ii) is subject to judicial review, in accordance with Subsection (14).

(b) "Dispositive motion" means a motion that is equivalent to:

(i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);

(ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule 12(c); or

(iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.

(c) "Party" means:

(i) the director who issued the permit order being challenged in the permit review adjudicative proceeding;

(ii) the permittee;

(iii) the person who applied for the permit, if the permit was denied; or

(iv) a person granted intervention by the administrative law judge.

(d) "Permit" means any of the following issued under this title:

(i) a permit;

(ii) a plan;

(iii) a license;

(iv) an approval order; or

(v) another administrative authorization made by a director.

(e) (i) "Permit order" means an order issued by a director that:

(A) approves a permit;

(B) renews a permit;

(C) denies a permit;

(D) modifies or amends a permit; or

(E) revokes and reissues a permit.

(ii) "Permit order" does not include an order terminating a permit.

(f) "Permit review adjudicative proceeding" means a proceeding to resolve a challenge to a permit order.

(2) This section governs permit review adjudicative proceedings.

(3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not apply to a permit review adjudicative proceeding.

(4) If a public comment period was provided during the permit application process, a person who challenges a permit order, including the permit applicant, may only raise an issue or argument during the permit review adjudicative proceeding that:

(a) the person raised during the public comment period; and

(b) was supported with sufficient information or documentation to enable the director to fully consider the substance and significance of the issue.

(5) The executive director shall appoint an administrative law judge, in accordance with Subsections 19-1-301(5) and (6), to conduct a permit review adjudicative proceeding.

(6) (a) Only the following may file a request for agency action seeking review of a permit order:

(i) a party; or

(ii) a person who is seeking to intervene under Subsection (7).

(b) A person who files a request for agency action seeking review of a permit order shall file the request:

(i) within 30 days after the day on which the permit order is issued; and

(ii) in accordance with Subsections 63G-4-201(3)(a) through (c).

(c) A person may not raise an issue or argument in a request for agency action unless the issue or argument:

(i) was preserved in accordance with Subsection (4); or

(ii) was not reasonably ascertainable before or during the public comment period.

(d) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules allowing the extension of the filing deadline

described in Subsection (6)(b)(i).

(7) (a) A person who is not a party may not participate in a permit review adjudicative proceeding unless the person is granted the right to intervene under this Subsection (7).

(b) A person who seeks to intervene in a permit review adjudicative proceeding under this section shall, within 30 days after the day on which the permit order being challenged was issued, file:

(i) a petition to intervene that:

(A) meets the requirements of Subsection 63G-4-207(1); and

(B) demonstrates that the person is entitled to intervention under Subsection (7)(c)(ii); and

(ii) a timely request for agency action.

(c) An administrative law judge shall grant a petition to intervene in a permit review adjudicative proceeding, if:

(i) the petition to intervene is timely filed; and

(ii) the petitioner:

(A) demonstrates that the petitioner's legal interests may be substantially affected by the permit review adjudicative proceeding;

(B) demonstrates that the interests of justice and the orderly and prompt conduct of the permit review adjudicative proceeding will not be materially impaired by allowing the intervention; and

(C) in the petitioner's request for agency action, raises issues or arguments that are preserved in accordance with Subsection (4).

(d) An administrative law judge:

(i) shall issue an order granting or denying a petition to intervene in accordance with Subsection 63G-4-207(3)(a); and

(ii) may impose conditions on intervenors as described in Subsections 63G-4-207(3)(b) and (c).

(e) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules allowing the extension of the filing deadline described in Subsection (7)(b).

(8) (a) An administrative law judge shall conduct a permit review adjudicative proceeding based only on the administrative record and not as a trial de novo.

(b) To the extent relative to the issues and arguments raised in the request for agency action, the administrative record shall consist of the following items, if they exist:

(i) the permit application, draft permit, and final permit;

(ii) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the director as part of the basis for the decision relating to the permit order;

(iii) the notice and record of each public comment period;

(iv) the notice and record of each public hearing, including oral comments made during the public hearing;

(v) written comments submitted during the public comment period;

(vi) responses to comments that are designated by the director as part of the basis for the decision relating to the permit order;

(vii) any information that is:

(A) requested by and submitted to the director; and

(B) designated by the director as part of the basis for the decision relating to the permit order;

(viii) any additional information specified by rule;

(ix) any additional documents agreed to by the parties; and

(x) information supplementing the record under Subsection (8)(c).

(c) (i) There is a rebuttable presumption against supplementing the record.

(ii) A party may move to supplement the record described in Subsection (8)(b) with technical or factual information.

(iii) The administrative law judge may grant a motion to supplement the record described in Subsection (8)(b) with technical or factual information if the moving party proves that:

(A) good cause exists for supplementing the record;

(B) supplementing the record is in the interest of justice; and

(C) supplementing the record is necessary for resolution of the issues.

(iv) The administrative law judge may supplement the record with technical or factual information on the administrative law judge's own motion if the administrative law judge determines that adequate grounds exist to supplement the record under Subsections (8)(c)(iii)(A) through (C).

(v) In supplementing the record with testimonial evidence, the administrative law judge may administer an oath or take testimony as necessary.

(vi) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules permitting further supplementation of the record.

(9) (a) The administrative law judge shall review and respond to a request for agency action in accordance with Subsections 63G-4-201(3)(d) and (e), following the relevant procedures for formal adjudicative proceedings.

(b) The administrative law judge shall require the parties to file responsive pleadings in accordance with Section 63G-4-204.

(c) If an administrative law judge enters an order of default against a party, the administrative law judge shall enter the order of default in accordance with Section 63G-4-209, following the relevant procedures for formal adjudicative proceedings.

(d) The administrative law judge, in conducting a permit review adjudicative proceeding:

(i) may not participate in an ex parte communication with a party to the permit review adjudicative proceeding regarding the merits of the permit review adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties; and

(ii) shall, upon receiving an ex parte communication, place the communication in the public record of the proceeding and afford all parties an opportunity to comment on the information.

(e) In conducting a permit review adjudicative proceeding, the administrative law judge may take judicial notice of matters not in the administrative record, in accordance with Utah Rules of Evidence, Rule 201.

(f) An administrative law judge may take any action in a permit review adjudicative proceeding that is not a dispositive action.

(10) (a) A person who files a request for agency action has the burden of

demonstrating that an issue or argument raised in the request for agency action has been preserved in accordance with Subsection (4).

(b) The administrative law judge shall dismiss, with prejudice, any issue or argument raised in a request for agency action that has not been preserved in accordance with Subsection (4).

(11) In response to a dispositive motion, the administrative law judge may submit a proposed dispositive action to the executive director recommending full or partial resolution of the permit review adjudicative proceeding, that includes:

(a) written findings of fact;

(b) written conclusions of law; and

(c) a recommended order.

(12) For each issue or argument that is not dismissed or otherwise resolved under Subsection (10)(b) or (11), the administrative law judge shall:

(a) provide the parties an opportunity for briefing and oral argument;

(b) conduct a review of the director's determination, based on the record described in Subsections (8)(b), (8)(c), and (9)(e); and

(c) submit to the executive director a proposed dispositive action, that includes:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order.

(13) (a) When the administrative law judge submits a proposed dispositive action to the executive director, the executive director may:

(i) adopt, adopt with modifications, or reject the proposed dispositive action; or

(ii) return the proposed dispositive action to the administrative law judge for further action as directed.

(b) On review of a proposed dispositive action, the executive director shall uphold all factual, technical, and scientific agency determinations that are supported by substantial evidence taken from the record as a whole.

(c) (i) The executive director may not participate in an ex parte communication with a party to the permit review adjudicative proceeding regarding the merits of the permit review adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties.

(ii) Upon receiving an ex parte communication, the executive director shall place the communication in the public record of the proceeding and afford all parties an opportunity to comment on the information.

(d) In reviewing a proposed dispositive action during a permit review adjudicative proceeding, the executive director may take judicial notice of matters not in the record, in accordance with Utah Rules of Evidence, Rule 201.

(e) The executive director may use the executive director's technical expertise in making a determination.

(14) (a) A party may seek judicial review in the Utah Court of Appeals of a dispositive action in a permit review adjudicative proceeding, in accordance with Sections 63G-4-401, 63G-4-403, and 63G-4-405.

(b) An appellate court shall limit its review of a dispositive action of a permit review adjudicative proceeding to:

(i) the record described in Subsections (8)(b), (8)(c), (9)(e), and (13)(d); and

(ii) the record made by the administrative law judge and the executive director during the permit review adjudicative proceeding.

(c) During judicial review of a dispositive action, the appellate court shall:

(i) review all agency determinations in accordance with Subsection 63G-4-403(4), recognizing that the agency has been granted substantial discretion to interpret its governing statutes and rules; and

(ii) uphold all factual, technical, and scientific agency determinations that are supported by substantial evidence viewed in light of the record as a whole.

(15) (a) The filing of a request for agency action does not stay a permit or delay the effective date of a permit.

(b) A permit may not be stayed or delayed unless a stay is granted under this Subsection (15).

(c) The administrative law judge shall:

(i) consider a party's motion to stay a permit during a permit review adjudicative proceeding; and

(ii) submit a proposed determination on the stay to the executive director.

(d) The administrative law judge may not recommend to the executive director a stay of a permit, or a portion of a permit, unless:

(i) all parties agree to the stay; or

(ii) the party seeking the stay demonstrates that:

(A) the party seeking the stay will suffer irreparable harm unless the stay is issued;

(B) the threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(C) the stay, if issued, would not be adverse to the public interest; and

(D) there is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits, which should be the subject of further adjudication.

(e) A party may appeal the executive director's decision regarding a stay of a permit to the Utah Court of Appeals, in accordance with Section 78A-4-103.

Enacted by Chapter 333, 2012 General Session
Amended by Chapter 360, 2012 General Session, (Coordination Clause)

19-1-302. Violation of laws and orders unlawful.

It is unlawful for any person:

(1) to violate the provisions of the laws of this title or the terms of any order or rule issued under it; or

(2) to fail to remove or abate from private property under the person's control at his own expense within 48 hours, or such other reasonable time as the department determines, after being ordered to do so, any nuisance, source of filth, or other sanitation violation.

Enacted by Chapter 112, 1991 General Session

19-1-303. Criminal and civil penalties -- Liability for violations.

(1) (a) Any person who violates any provision of this title or lawful orders or rules adopted under this title by the department shall:

(i) in a civil proceeding be assessed a penalty not to exceed the sum of $5,000; or

(ii) in a criminal proceeding:

(A) for the first violation, be guilty of a class B misdemeanor; and

(B) for a subsequent similar violation within two years, be guilty of a class A misdemeanor.

(b) In addition, a person is liable for any expense incurred by the department in removing or abating any violation.

(2) Assessment or conviction under this title does not relieve the person assessed or convicted from civil liability for any act which was also a violation of the public health laws.

(3) Each day of violation of this title or rules made by the department under it may be considered a separate violation.

(4) The enforcement procedures and penalties provided in Subsections (1) through (3) do not apply to chapters in this title which provide for other specific enforcement procedures and penalties.

(5) Unless otherwise specified in statute, the department shall deposit all civil penalties and fines imposed and collected under this title into the General Fund.

Amended by Chapter 324, 1995 General Session

19-1-304. Principal and branch offices of department.

(1) The principal office of the department shall be in Salt Lake County.

(2) The department may establish branch offices at other places in the state to furnish comprehensive and effective environmental programs and to coordinate with and assist local health officers.

Enacted by Chapter 112, 1991 General Session

19-1-305. Administrative enforcement proceedings -- Tolling of limitation period.

Issuing a notice of a violation, an order, or a notice of agency action under this title tolls the running of the period of limitation for commencing a civil action to assess or collect a penalty until the sooner of:

(1) the day on which the notice of violation, order, or agency action becomes final under Title 63G, Chapter 4, Administrative Procedures Act; or

(2) three years from the day on which the department issues a notice or order described in this section.

Amended by Chapter 382, 2008 General Session

19-1-306. Records of the department.

(1) Except as provided in this section, records of the department shall be subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(2) (a) The standards of the federal Freedom of Information Act, 5 U.S.C. Sec. 552, and not the standards of Subsections 63G-2-305(1) and (2), shall govern access to records of the department for which business confidentiality has been claimed under Section 63G-2-309, to the extent those records relate to a program:

(i) that is delegated, authorized, or for which primacy has been granted to the state;

(ii) for which the state is seeking delegation, authorization, or primacy; or

(iii) under the federal Comprehensive Environmental Response, Compensation, and Liability Act.

(b) The regulation of the United States Environmental Protection Agency interpreting the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2 on January 1, 1992, shall also apply to the records described in Subsection (1).

(3) (a) The department may, upon request, make trade secret and confidential business records available to the United States Environmental Protection Agency insofar as they relate to a delegated program, to a program for which the state is seeking delegation, or to a program under the federal Comprehensive Environmental Response, Compensation and Liability Act.

(b) In the event a record is released to the United States Environmental Protection Agency under Subsection (3)(a), the department shall convey any claim of confidentiality to the United States Environmental Protection Agency and shall notify the person who submitted the information of its release.

(4) Trade secret and confidential business records under Subsection (2) shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except Subsections 63G-2-305(1) and (2).

(5) Records obtained from the United States Environmental Protection Agency and requested by that agency to be kept confidential shall be managed as protected records under the Government Records Access and Management Act, and all provisions of that act shall apply except to the extent they conflict with this section.

Amended by Chapter 382, 2008 General Session

19-1-307. Evaluation of closure, postclosure, and perpetual care and maintenance for hazardous waste and radioactive waste treatment and disposal facilities -- Report.

(1) (a) Beginning in 2006, the Solid and Hazardous Waste Control Board created in Section 19-1-106 shall direct an evaluation every five years of:

(i) the adequacy of the amount of financial assurance required for closure and postclosure care under 40 C.F.R. subpart H, Sections 264.140 through 264.151 submitted pursuant to a hazardous waste operation plan for a commercial hazardous waste treatment, storage, or disposal facility under Section 19-6-108; and

(ii) the adequacy of the amount of financial assurance or funds required for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c).

(b) The evaluation shall determine:

(i) whether the amount of financial assurance required is adequate for closure and postclosure care of hazardous waste treatment, storage, or disposal facilities;

(ii) whether the amount of financial assurance or funds required is adequate for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility, if found necessary following the evaluation under Subsection (1)(c); and

(iii) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial hazardous waste treatment, storage, or disposal facilities including:

(A) groundwater corrective action;

(B) differential settlement failure; or

(C) major maintenance of a cell or cells.

(c) The Solid and Hazardous Waste Control Board shall evaluate in 2006 whether financial assurance or funds are necessary for perpetual care and maintenance following the closure and postclosure period of a commercial hazardous waste treatment, storage, or disposal facility to protect human health and the environment.

(2) (a) Beginning in 2006, the Radiation Control Board created in Section 19-1-106 shall direct an evaluation every five years of:

(i) the adequacy of the Radioactive Waste Perpetual Care and Maintenance Account created by Section 19-3-106.2; and

(ii) the adequacy of the amount of financial assurance required for closure and postclosure care of commercial radioactive waste treatment or disposal facilities under Subsection 19-3-104(12).

(b) The evaluation shall determine:

(i) whether the restricted account is adequate to provide for perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities;

(ii) whether the amount of financial assurance required is adequate to provide for closure and postclosure care of commercial radioactive waste treatment or disposal facilities;

(iii) the costs under Subsection 19-3-106.2(5)(b) of using the Radioactive Waste Perpetual Care and Maintenance Account during the period before the end of 100 years following final closure of the facility for maintenance, monitoring, or corrective action in the event that the owner or operator is unwilling or unable to carry out the duties of postclosure maintenance, monitoring, or corrective action; and

(iv) the costs above the minimal maintenance and monitoring for reasonable risks that may occur during closure, postclosure, and perpetual care and maintenance of commercial radioactive waste treatment or disposal facilities including:

(A) groundwater corrective action;

(B) differential settlement failure; or

(C) major maintenance of a cell or cells.

(3) The boards under Subsections (1) and (2) shall submit a joint report on the evaluations to the Legislative Management Committee on or before October 1 of the year in which the report is due.

Amended by Chapter 278, 2010 General Session

19-1-401. Title.

This part is known as the "Clean Fuels and Vehicle Technology Program Act."

Amended by Chapter 136, 2006 General Session

19-1-402. Definitions.

As used in this part:

(1) "Clean fuel" means:

(a) propane, natural gas, or electricity; or

(b) other fuel that meets the clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.

(2) "Clean vehicle" means a vehicle that:

(a) uses a clean fuel; or

(b) is an electric-hybrid vehicle.

(3) "Electric-hybrid vehicle" means a vehicle:

(a) primarily powered by an electric motor that draws current from:

(i) rechargeable storage batteries;

(ii) fuel cells; or

(iii) other sources of electric current; and

(b) that also operates on or is capable of operating on a nonelectrical source of power.

(4) "Fund" means the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403.

(5) (a) "Government vehicle" means a motor vehicle:

(i) registered in Utah; and

(ii) owned and operated by:

(A) the state;

(B) a public trust authority;

(C) a school district;

(D) a county; or

(E) a municipality.

(b) "Government vehicle" includes a metropolitan rapid transit motor vehicle, bus, truck, law enforcement vehicle, or emergency vehicle.

(6) "Incremental cost" means the difference between the cost of the OEM vehicle and the same vehicle model manufactured without the clean fuel fueling system.

(7) "OEM vehicle" means a vehicle manufactured by the original vehicle manufacturer or its contractor as a clean vehicle.

(8) "Private sector business vehicle" means a motor vehicle registered in Utah that is owned and operated solely in the conduct of a private business enterprise.

(9) "Refueling equipment" means compressors when used separately, compressors used in combination with cascade tanks, and other equipment that constitute a central refueling system capable of dispensing vehicle fuel.

Amended by Chapter 295, 2014 General Session

19-1-403. Clean Fuels and Vehicle Technology Fund -- Contents -- Loans or grants made with fund money.

(1) (a) There is created a revolving fund known as the Clean Fuels and Vehicle Technology Fund.

(b) The fund consists of:

(i) appropriations to the fund;

(ii) other public and private contributions made under Subsection (1)(c);

(iii) interest earnings on cash balances; and

(iv) all money collected for loan repayments and interest on loans.

(c) The department may accept contributions from other public and private sources for deposit into the fund.

(2) (a) The department may make a loan or a grant with money available in the fund for:

(i) the conversion of a private sector business vehicle or a government vehicle to use a clean fuel, if certified by the Air Quality Board under Subsection 19-1-405(1)(a); or

(ii) the purchase of an OEM vehicle for use as a private sector business vehicle or government vehicle.

(b) The amount of a loan for any vehicle under Subsection (2)(a) may not exceed:

(i) the actual cost of the vehicle conversion;

(ii) the incremental cost of purchasing the OEM vehicle; or

(iii) the cost of purchasing the OEM vehicle if there is no documented incremental cost.

(c) The amount of a grant for any vehicle under Subsection (2)(a) may not exceed:

(i) 50% of the actual cost of the vehicle conversion minus the amount of any tax credit claimed under Section 59-7-605 or 59-10-1009 for the vehicle for which a grant is requested; or

(ii) 50% of the incremental cost of purchasing an OEM vehicle minus the amount of any tax credit claimed under Section 59-7-605 or 59-10-1009 for the vehicle for which a grant is requested.

(d) (i) Subject to the availability of money in the fund, the department may make a loan or grant for the purchase of vehicle refueling equipment for a private sector business vehicle or a government vehicle.

(ii) The maximum amount loaned or granted per installation of refueling equipment may not exceed the actual cost of the refueling equipment.

(3) The department may:

(a) establish an application fee for a loan or grant from the fund by following the procedures and requirements of Section 63J-1-504; and

(b) reimburse itself for the costs incurred in administering the fund from:

(i) the fund; or

(ii) application fees established under Subsection (3)(a).

(4) (a) The fund balance may not exceed $10,000,000.

(b) Interest on cash balances and repayment of loans in excess of the amount necessary to maintain the fund balance at $10,000,000 shall be deposited in the

General Fund.

(5) (a) Loans made from money in the fund shall be supported by loan documents evidencing the intent of the borrower to repay the loan.

(b) The original loan documents shall be filed with the Division of Finance and a copy shall be filed with the department.

Amended by Chapter 295, 2014 General Session

19-1-404. Department duties -- Rulemaking -- Loan repayment.

(1) The department shall:

(a) administer the fund created in Section 19-1-403 to encourage government officials and private sector business vehicle owners and operators to obtain and use clean fuel vehicles; and

(b) by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:

(i) specifying the amount of money in the fund to be dedicated annually for grants;

(ii) limiting the amount of a grant given to any person claiming a tax credit under Section 59-7-605 or 59-10-1009 for the motor vehicle for which a grant is requested to assure that the sum of the tax credit and grant does not exceed:

(A) 50% of the incremental cost of the OEM vehicle; or

(B) 50% of the cost of conversion equipment;

(iii) limiting the number of motor vehicles per fleet operator that may be eligible for a grant in a year;

(iv) specifying criteria the department shall consider in prioritizing and awarding loans and grants;

(v) specifying repayment periods;

(vi) specifying procedures for:

(A) awarding loans and grants; and

(B) collecting loans; and

(vii) requiring all loan and grant applicants to:

(A) apply on forms provided by the department;

(B) agree in writing to use the clean fuel for which each vehicle is converted or purchased using loan or grant proceeds for a minimum of 70% of the vehicle miles traveled beginning from the time of conversion or purchase of the vehicle;

(C) agree in writing to notify the department if a vehicle converted or purchased using loan or grant proceeds becomes inoperable through mechanical failure or accident and to pursue a remedy outlined in department rules;

(D) provide reasonable data to the department on a vehicle converted or purchased with loan or grant proceeds; and

(E) submit a vehicle converted or purchased with loan or grant proceeds to inspections by the department as required in department rules and as necessary for administration of the loan and grant program.

(2) (a) When developing repayment schedules for the loans, the department shall consider the projected savings from use of the clean vehicle.

(b) A repayment schedule may not exceed 10 years.

(c) The department shall make a loan from the fund for a private sector vehicle at an interest rate equal to the annual return earned in the state treasurer's Public Treasurer's Pool as determined the month immediately preceding the closing date of the loan.

(d) The department shall make a loan from the fund for a government vehicle with no interest rate.

(3) The Division of Finance shall:

(a) collect and account for the loans; and

(b) have custody of all loan documents, including all notes and contracts, evidencing the indebtedness of the fund.

Amended by Chapter 295, 2014 General Session

19-1-405. Air Quality Board duties -- Rulemaking.

(1) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Air Quality Board may make rules to:

(a) certify a motor vehicle on which conversion equipment has been installed if:

(i) before the installation of conversion equipment, the motor vehicle does not exceed the emission cut points for:

(A) a transient test driving cycle, as specified in 40 CFR 51, Appendix E to Subpart S; or

(B) an equivalent test for the make, model, and year of the motor vehicle; and

(ii) the motor vehicle's emissions of regulated pollutants, when operating with clean fuel, is less than the emissions were before the installation of conversion equipment;

(b) recognize a test or standard that demonstrates a reduction in emissions; or

(c) recognize a certification standard from another state.

(2) A reduction in emissions under Subsection (1)(a)(ii) is demonstrated by:

(a) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the Air Quality Board;

(b) testing the motor vehicle, before and after the installation of the conversion equipment, in accordance with 40 CFR 86, Control of Air Pollution from New and In-use Motor Vehicle Engines: Certification and Test Procedures, using all fuel the motor vehicle is capable of using; or

(c) any other test or standard recognized by the Air Quality Board in rule.

Amended by Chapter 295, 2014 General Session

19-1-406. Retrofit compressed natural gas vehicles -- Inspections, standards, and certification -- Compliance with other law -- Programs to coordinate.

(1) An owner of a retrofit compressed natural gas vehicle that is retrofit on or after July 1, 2010, may not operate the retrofit compressed natural gas vehicle before the owner has the retrofit compressed natural gas vehicle:

(a) inspected and certified as safe in accordance with relevant standards,

including the National Fire Protection Association 52 Vehicular Gaseous Fuel Systems Code, by a CSA America CNG Fuel System Inspector; and

(b) tested to ensure that the retrofit compressed natural gas vehicle satisfies the emissions standards:

(i) if any, for the county in which the retrofit compressed natural gas vehicle is registered; or

(ii) for the county in the state with the most lenient emissions standards, if the retrofit compressed natural gas vehicle is registered in a county with no emissions standards.

(2) A person who performs a retrofit on a retrofit compressed natural gas vehicle shall certify to the owner of the retrofit compressed natural gas vehicle that the retrofit does not tamper with, circumvent, or otherwise affect the vehicle's on-board diagnostic system, if any.

(3) (a) After the owner of a retrofit compressed natural gas vehicle that is retrofit on or after July 1, 2010, has the retrofit compressed natural gas vehicle inspected under Subsection (1), the owner shall have the retrofit inspected for safety by a CSA America CNG Fuel System Inspector:

(i) the sooner of:

(A) every three years after the retrofit; or

(B) every 36,000 miles after the retrofit; and

(ii) after any collision occurring at a speed of greater than five miles per hour.

(b) An inspector at a state-required safety inspection shall verify that a retrofit compressed natural gas vehicle is inspected in accordance with Subsection (3)(a).

(4) (a) The Division of Air Quality may develop programs to coordinate amongst government agencies and interested parties in the private sector to facilitate:

(i) testing to ensure compliance with emissions and anti-tampering standards established in this section or by federal law; and

(ii) the retrofitting of vehicles to operate on compressed natural gas vehicles in a manner that provides for:

(A) safety;

(B) compliance with applicable law; and

(C) potential improvement in the air quality of this state.

(b) In developing a program under this Subsection (4), the Division of Air Quality shall:

(i) allow for testing using equipment widely available within the state, if possible; and

(ii) consult with relevant federal, state, and local government agencies and other interested parties.

Enacted by Chapter 236, 2010 General Session

19-1-501. Title.

This part is known as the "Engine Coolant Bittering Agent Act."

Enacted by Chapter 170, 2010 General Session

19-1-502. Definitions.

(1) "Bittering agent" means an aversive agent that renders engine coolant unpalatable.

(2) "Engine coolant" means:

(a) a substance or preparation, regardless of its origin, used as the cooling medium in the cooling system of an internal combustion engine to provide protection against freezing, overheating, and corrosion of the cooling system; or

(b) a product that is labeled to indicate or imply that it will prevent freezing or overheating of the cooling system of an internal combustion engine.

Enacted by Chapter 170, 2010 General Session

19-1-503. Requirements for engine coolant sold in state.

On or after January 1, 2011, a person may not sell engine coolant to a person in this state that is manufactured on or after January 1, 2011, if the engine coolant:

(1) contains more than 10% ethylene glycol; and

(2) does not contain:

(a) denatonium benzoate within the following amounts:

(i) a minimum of 30 parts per million; and

(ii) a maximum of 50 parts per million; or

(b) a similar bittering agent that renders the engine coolant unpalatable if it meets or exceeds the degree of aversion as compared to denatonium benzoate at a concentration of 30 parts per million.

Enacted by Chapter 170, 2010 General Session

19-1-504. Recordkeeping.

(1) A manufacturer or packager of engine coolant that sells the engine coolant to a person in this state shall maintain for at least three years a record of the following for a bittering agent used in the engine coolant in accordance with Section 19-1-503:

(a) the trade name;

(b) the scientific name; and

(c) the active ingredients.

(2) A manufacturer or packager shall make the information described in Subsection (1) available to the public upon request.

Enacted by Chapter 170, 2010 General Session

19-1-505. Liability limitation.

(1) (a) Subject to the other provisions of this section, a person may not be held liable as described in Subsection (1)(b) if:

(i) the person is a manufacturer, processor, distributor, recycler, or seller of an engine coolant; and

(ii) the engine coolant at issue contains denatonium benzoate in a concentration described in Section 19-1-503.

(b) A person described in Subsection (1)(a) may not be held liable to any person

for any of the following that results from the inclusion of denatonium benzoate in an engine coolant in the concentrations described in Section 19-1-503:

(i) personal injury;

(ii) death;

(iii) property damage;

(iv) damage to the environment, including natural resources; or

(v) economic loss.

(2) Subsection (1) does not apply to a liability to the extent that:

(a) the cause of the liability is unrelated to the inclusion of denatonium benzoate in an engine coolant; or

(b) the injury described in Subsection (1)(b) is the result of willful or wanton misconduct or gross negligence by a manufacturer, processor, distributor, recycler, or seller of engine coolant.

(3) Nothing in this section shall be construed to exempt any manufacturer or distributor of denatonium benzoate from any liability related to denatonium benzoate.

Enacted by Chapter 170, 2010 General Session

19-1-506. Preemption.

With respect to a retail container containing less than 55 gallons of engine coolant, a political subdivision of this state may not establish or enforce a prohibition, limitation, standard, or other requirement relating to the inclusion of a bittering agent in an engine coolant that differs from, or is in addition to, a requirement under this part.

Enacted by Chapter 170, 2010 General Session

19-1-507. Civil action.

(1) The attorney general or a person may bring a civil action in a court of competent jurisdiction to seek:

(a) an injunction to enforce the part; and

(b) if the action is brought by the attorney general, a civil penalty not to exceed $500 for each day the part is violated.

(2) In an action brought under this section, a court may:

(a) order injunctive relief;

(b) impose a civil penalty to the extent provided in Subsection (1);

(c) award attorney fees and costs to the attorney general or person who brings the civil action, if the attorney general or person prevails; or

(d) take a combination of actions under this Subsection (2).

(3) A civil penalty imposed under this section shall be deposited into the General Fund.

Enacted by Chapter 170, 2010 General Session

19-1-508. Exemptions.

This part does not apply to:

(1) the sale of a motor vehicle or a part of a motor vehicle that contains engine

coolant; or

(2) a wholesale container of engine coolant that contains 55 gallons or more of engine coolant if it contains a conspicuous label indicating whether or not it contains a bittering agent.

Enacted by Chapter 170, 2010 General Session